

**STATE OF CALIFORNIA**  
**FRAUD ASSESSMENT COMMISSION MEETING**  
**SACRAMENTO, CALIFORNIA**  
**SUMMARY OF MEETING MINUTES**  
**JUNE 17, 2008**

Attendees: William Zachry, Chairman; and Commission Members Darlyn Regan, Jiles Smith, Carol Schatz, James Little and Lilia Garcia and Chuck Center (via telephone).

Others present: Dale Banda, Deputy Commissioner, Enforcement Branch; Rick Plein, Fraud Division Bureau Chief, Workers' Compensation; and Vanessa Himelblau, Senior Staff Counsel, CDI Legal Division.

Chairman Zachry called the meeting to order and asked for a motion to approve the summary meeting minutes as submitted.

**Motion**

Commission member Darlyn Regan made the motion to submit the summary minutes into the record.

Commission member Lilia Garcia seconded the motion.

**Action**

The motion passed unanimously.

Bill Zachry, Chair remarked that today's meeting was most important as the FAC has the responsibility to provide advice and consent to the distribution of funds to the district attorneys.

Also, the FAC will hear a presentation on the study for medical payment accuracy, which is part of the studies that is the result of the state audit of the fraud process. The study is for medical payments over and underpayment accuracy and is not an assessment of the exact amount of fraud within the system. "From this study the intention is that we should be able to do a better job of helping and encouraging the focus of the funding to maximize the impact on the reduction of fraud within the California workers' compensation system," stated Zachry.

Paula Douglass, Navigant Consulting addressed the Commission on the results of the medical payment accuracy study. Navigant developed the methodology which was similar to a method developed by Professor Malcolm Sparrow of the Harvard University, John F. Kennedy School of Government.

The purpose of the Workers' Compensation Payment Accuracy Study is to:

- Determine the extent of workers' compensation medical overpayments and underpayments to justify and provide information on appropriate allocation of resources to detect and evaluate suspected medical provider fraud in California.
- Provide recommendations for ongoing detection and monitoring of suspected abuse and fraud in the workers' compensation system, and
- Identify potential vulnerabilities and suspected perpetrators of fraud.

This study does not directly measure the level of workers' compensation medical payment fraud in California because requirements to establish criminal intent must involve the criminal justice system and due process.

The study does reflect opportunities to reduce where potential fraud exists as oftentimes fraud and abuse masquerade as "honest" errors.

This is the first study of its kind to measure payment accuracy for workers' compensation in California. The study provides a baseline for subsequent studies, serves as a starting point to implement anti-fraud program improvements, monitors efficiency and effectiveness and tracks workers' compensation medical bill payment trends. In summary, 21.9 percent of the sample dollars were paid in error for the three combined reviews: medical review, electronic processing, and severely injured workers. The potential payment errors in the entire California workers' compensation system range from \$494 million to \$1.37 billion for these three combined reviews.

Navigant offered several recommendations to address a variety of causes on payment errors identified in the study as well as ways to more directly identify potential fraud.

- Increase educational efforts for providers and insurers about appropriate courses regarding care per the American College of Environmental Medicine Guidelines for the highest volume types of injuries.
- Data mine the new medical bill database in the Workers' Compensation Information System (WCIS) using a range of relevant analytic and pattern-recognition techniques, including advanced techniques such as artificial intelligence to identify aberrant patterns and trends in workers' compensation medical billing fraud on a system-wide basis and focus investigative efforts.

- Consider expanding statutory authority for access by the Department of Insurance to injured workers' medical records.
- Develop a medical benefits administration 'best practices' check list for employers to use in evaluating their workers' compensation insurers' or third-party administrators' efforts in ensuring medical payment accuracy and preventing and detecting fraud.
- Consider requiring insurers to send Explanation of Benefit (EOB) notices to injured workers.
- Consider requiring provider registration for workers' compensation.

Ms. Douglass thanked the Fraud Assessment Commission, the Commission on Health and Safety and Workers' Compensation, the Department of Industrial Relations, the California Department of Insurance, insurance companies, self-insured employers and third-party administrators for their participation in the study.

Mr. Zachry raised the issue as to the spread of dates of injury from the sample used, to cover the reform period. Ms. Douglass commented the dates of injury spread from 2001 through June 2006, which partly included the time after implementation of the reform.

Mr. Zachry further noted the study used various dates of injury across a period of time but only sampled the medical treatment within a one-year period of time.

Commission member Regan raised the issue that Navigant thought numbers could be higher because of the lack of documentation. "You never went back to the carrier and asked why you didn't get documentation. Is that correct?"

Ms. Douglass remarked that in studies, the lack of documentation is considered an error. However, we did not know whether the insurer provided documentation, never received it or did not retain it, and therefore, could not produce it for purposes of the study. Navigant excluded those from the sample, and this is why the sample size was smaller than intended.

The discussion continued, and Commission member Regan noted that the study would benefit from a medical benefits administration "best practices" checklist for employers to use in evaluating workers' compensation insurers' efforts in ensuring medical payment accuracy in preventing and detecting fraud. "How are you going to do that through a checklist?" queried Regan.

Ms. Douglass noted that the majority of errors were found in medical review, so a standard of practice, evidence-based medicine practices, that are appropriate for different kinds of injuries, could be utilized by employers.

Commission member Little raised the issue that in the study, 174 insurers participated, which includes both self-insured and insurance companies. “Do you have a percentage breakdown between self-insurers and insurance companies in the study?”

The breakdown of insurance carriers and self-insured employers is depicted in Table 2.2 with the sample of 761 medical bills out of which 67 were insurance carriers and 107 were self-insured employers. However, when the sample comes down to 97, for which Navigant conducted all three reviews, there were 34 insurers, 22 insurance carriers, and 12 self-insured employers. “We had bills from insurers and self-insured employers for 92 different medical providers,” stated Ms. Douglass.

Commission member Smith raises the issue as to whether or not Navigant would recommend external audits.

Ms. Douglass notes that the study recommended the State of California provide the CDI with access to injured worker medical records that would support an audit.

### **Public Comments**

Linda Roberts, an injured worker, remarked that two issues are troublesome: 1) focusing on the wrong problem and 2) pushing the ACOEM guidelines. “People won’t want to be providers. We will get less medical care than we have now,” stated Roberts.

Steve Zeltzer, California Coalition for Workers’ Memorial Day commented a serious issue not addressed in the study is that workers are being rejected and end up on Social Security and the result is cost-shifting. Workers are rejected on health claims, employers deny them under ACOEM regulations and they end up going to a public hospital or applying for SSI.

Leah Diaz, President of California Chapter Voices, commented she would like clarification as to whether or not ACOEM is a guideline or law.

Dori Rose Inda, Watsonville Law Center and the Agricultural Workers Access to Health Project would like the FAC to consider the impact on the medical professionals that willingly participate in the work comp system and not discourage them.

### **Motion**

Commission member, Little made the motion to accept the report and establish a committee to review and develop recommendations to follow-up, at the next meeting.

Commission member Garcia seconded the motion.

Commission member Center raised the issue of confidentiality for workers whose information was used in the report. Chairman Zachry noted that all documents supporting the report were to be destroyed and that none of the information is to be retained by any individual.

### **Action**

The motion passed with six 'ayes' and one abstention.

Christine Baker presented a proposal for an Underground Economy Study. Ms. Baker submitted a letter from Angie Wei, Chairman, Commission on Health and Safety and Workers' Compensation (CHSWC). The letter identified other states that have performed studies of this nature and reviewed the underground economy. Ms. Wei encouraged the Commission to move forward with the study.

Ms. Baker noted that several agencies, the Division of Labor Standards Enforcement (DLSE) included, would need to sit down and identify what is the most effective, streamlined way to identify the underground economy. The team was present and available for questions from the FAC.

Commission member Garcia raised the issue as to the flexibility identified in the proposal. Ms. Baker commented that the question relates to how the proposal will identify data, target employers or industries. The proposed methodology will utilize the EEEEC as they do sweeps. We would measure in a more systematic way what would be gathered by the underground economy in a random manner. "The randomization is kind of critical from the standpoint of being able to extrapolate to the state of California exactly how much underground economy exists," stated Baker.

The EEEEC is a triple agency group consisting of the Division of Labor Standards Enforcement (DLSE), Employment Development Department (EDD), and Cal OSHA as well as a federal component. The DLSE goes out on sweeps and looks at wage violations. "This study would piggy-back off the information to determine how to extrapolate that, collect additional information and then extrapolate the entire state of California for a measurement," noted Baker.

Commission member Darlyn Regan raised the issue that there was a press announcement stating the Department of Industrial Relations (DIR) was starting and partnering with other agencies and leveraging resources to seek out illegally operating employers. Does this proposal duplicate that task force effort?

The DIR effort is only uninsured employers by matching records between the EDD and the Ratings Bureau. "Two separate projects - one where they match reporting records and the other is for those who don't report at all," commented Baker.

The discussion continued and Baker remarked, "Our study would look at employers that may be operating without reporting payroll, do not have workers' comp insurance, are paying under the table and are hiring under the table - all cash", type of employer".

Commission member Little noted that in the next 12 to 18 months, the department should have the availability to respond to those who are retained, buying services, et cetera, as they can call the Ratings Bureau and obtain information as to whether that employer has coverage or not.

Commission member Schatz commented she believes the study will be of great assistance. "Many of the employees operating this underground economy wouldn't even have the means by which to make these phone calls or even know that it's an issue," noted Schatz.

Commission member Center commented that anything the FAC can do to "level the playing field" to make sure that legitimate employers are not paying" through the nose" to protect the underground employers out there is a benefit.

Commission member Garcia weighed in on the discussion and stated, "In regard to the janitorial industry, which is the industry I represent in my day job, we have employers who go to Sacramento lobbying, looking for a measurement of the underground economy. In particular in Los Angeles County where they have more than a million workers operating in the underground economy." This study could allow for more targeted prosecutions.

Chairman Zachry noted there is \$750,000 for this year's budget. The underground economy is a significant burden on our state. Although there is fraud, it is not workers' compensation fraud. It is payroll fraud, payroll taxes, violations of OSHA and safety programs. This study needs to be handled through the Commission on Health and Safety and Workers' Compensation (CHSWC).

I believe the FAC understands the significant impact the underground economy has on workers' compensation, and also on the general economy in California.

Commission member Garcia raised the issue that the FAC seems to support the intent of the study, but there are legitimate issues such as who is the major enforcement agency and can they become a monetary partner in the effort.

Ms. Baker acknowledges CHSWC's interest in moving the project forward and with concurrence from the chair and members, would put up to 20 percent of the contract.

Ms. Regan commented regarding commitment of the contract from other agencies prior to going forward.

Commission member Center raised the issue as to whether or not there were MOUs in place currently. Deputy Commissioner Banda noted that the department is a member of the underground economy task force allowing for exchanges of information among enforcement agencies.

Commission member Little queried as to what happens to the funds if the FAC does not go forward with the study. Deputy Commissioner Banda expressed that if the FAC does not go forward; the funds will be maintained in the Work Comp Fraud Account and can be used to offset next year's aggregate assessment.

#### Public Comment

Gary Fagan, California District Attorneys Association (CDAA) Co-Chair remarked that the district attorneys in the program have not had an opportunity to review the proposal and asked the FAC not to rush into the contract.

Dori Rose Inda spoke on behalf of the Workers' Compensation Enforcement Collaborative (WCEC) and advised the FAC that for over two-years, they have worked to determine what the issues are and how big of a problem it is that workers do not have access to workers' compensation benefits. Ms. Inda strongly supports the proposal in the hopes that the study will include how to make a direct connection to reporting and enforcement.

The Collaborative mission is to address the barriers that face immigrant and other low wage workers in accessing medical treatment and benefits under the workers' compensation system.

On July 14, 2008, the Collaborative will meet with John Duncan, Director, Department of Industrial Relations (DIR), to discuss how DIR can provide unrepresented workers assistance in identifying, naming and locating their employers, so workers can pursue their work comp claims.

Also, the Collaborative has developed a survey to be distributed by the California Applicant's Attorneys Association (CAAA) to gather information on how best to assist the injured workers in obtaining representation in the uninsured employer cases. The Collaborative continues to do outreach to medical providers and emergency medical providers as resources for reporting uninsured employers.

The next meeting of the WCEC will be August 8, 2008 in Oakland to hear from various state agency representatives. Commission member Garcia raised the issue as to whether or not the WCEC had outreach to medical clinics. Clinical staff needs training to understand the fear the workers face. Ms. Garcia also raised the issue as to whether or not reporting through the FD-1 is available in Spanish?

Deputy Commissioner Banda commented that the department has a hot-line that can be accessed by the public. The department acts as an advocate and will fill

out the FD-1 on behalf of the claimant. However, at this time, the FD-1 is in English.

### **Fraud Division Report**

Rick Plein, Bureau Chief of the Workers' Compensation Program, reported on the Insurance Commissioner's Review Panel, which had convened on June 4, 2008. The department received 38 applications, representing 40 counties, requesting \$33,047,064 in funding.

Based on the California Code of Regulations, the Review Panel is comprised of two members of the FAC, Lilia Garcia and Darlyn Regan; the Director or designee from the Department of Industrial Relations, David Rowan, Chief Deputy Director; an expert in consumer crimes, designated by the insurance commissioner, retired Bureau Chief Jerry Treadway; and the Deputy Commissioner of the Fraud Division or his designee, Rick Plein, Bureau Chief.

Each Panel member read the counties' request for application, asked questions of the county during the hearing process and then made funding recommendations based on the funding criteria used. The recommendation went forward to the Insurance Commissioner for his determination, with the advice and consent of the Fraud Division as to the most effective distribution of money. The FAC is asked for their advice and consent on the determination for distribution of funds to the district attorneys.

Bureau Chief Plein submitted a letter from the Insurance Commissioner, Steve Poizner, into the record. "The review panel recommended a total funding distribution of \$28,845,324, and I have increased the funding by \$100,000 for Orange County and \$50,000 for Kern County, bringing the total available funding to \$28,995,324," stated Poizner.

### **Public Comment**

Steve Zeltzer, California Coalition for Workers' Memorial Day, commented that before the funding decision was made, the FAC needs to determine how many insurance companies have been prosecuted for fraud in California by district attorneys who are required to prosecute all fraud, not just fraud of injured workers and employers.

Tera Paillet raised the issue as to the increase in funding for Orange County. However, as was previously stated, the funding determination is made by the Insurance Commissioner.

### **Motion**

Commission member Regan made the motion to accept the recommendation of Insurance Commissioner Poizner for the funding for the district attorneys of California for the next fiscal year.



Commission member Garcia seconded the motion.

### **Action**

The motion passed unanimously.

### **District Attorneys**

Gary Fagan reported on the legislative experience with the Department of Insurance. With the funding assessed up to \$29 million the department needed spending authority for an additional \$4 million in excess of \$25 million from the previous funding cycle. The motion was denied without any opportunity to make public comment. Finally, through the conference committee process, approval was granted to increase the spending authority.

Mr. Fagan commented that the district attorneys are working more complicated cases: premium fraud, provider fraud, and large-scale uninsured employer fraud cases. The litigation process is increasing tremendously. These complex cases require state of the art equipment such as commercial imaging.

Commission member Schatz requested more clarification on what could be done on a regional basis to assist with resources.

Deputy Commissioner Banda noted that the department wants to work with the district attorneys and develop a potential plan to address the issue of how best to share resources.

Mr. Fagan raised the issue as to whether new ideas from other county applications could be shared. The district attorneys believe the application is too long and too complicated. However, this year's process was fairly focused.

Chairman Zachry remarked that it is a complex process and the FAC needs to be able to say we have done everything we possibly can to make sure that this is a fair and equitable process.

Dominic Dugo, San Diego District Attorney's Office reported on the upcoming annual insurance fraud conference hosted by the California District Attorney Association and the California Department of Insurance. This year, the event will take place in Anaheim at the end of October.

Chairman Zachry requested that the department provide the number of hot-line calls received and a breakdown by employer, claimant, provider, et cetera. The chair expressed an interest in participating on the committee to work on duplication of efforts and the forensic capacity of the department.

John Duncan, Director, Department of Industrial Relations (DIR), addressed the FAC regarding the implementation of Senate Bill 869.

The enforcement program systematically identifies unlawfully uninsured employers to prioritize as enforcement targets. Through several MOUs with various governmental agencies, the program was initiated in May and the Division of Labor Standards Enforcement received the first encrypted list of 500 employers. The list was mailed to the Workers' Compensation Insurance Rating Bureau (WCIRB) for verification of proof of insurance. WCIRB verified 309 employers had work comp coverage. However, 191 did not have proof of coverage.

Letters were sent to 191 employers and 107 employers did not respond. These are the targets and all 191 files were sent to eight bureau field enforcement supervisors who will docket the cases in the computer system and assign for investigation.

"We hope to re-start this process quarterly. In theory, the program should pay for itself by penalties collected. "This is really a preliminary number. It's hard to believe that this sampling – this is just not the general understanding of the underground economy," stated Duncan.

The FAC continued discussing the progress and potential of the DIR project. Commission member Center raised the issue as to whether or not this project and the proposal presented by CHSWC were duplicative. Mr. Duncan noted that to the best of his understanding, there is no overlap.

The discussion continued. Commission member Center noted his approval to go forward with the study. Commission member Schatz presented her concern for utilizing such a large amount of money for the study when those funds could be used in Los Angeles to prosecute medical provider fraud.

The FAC was divided in their overall thinking. Chairman Zachry offered his thoughts that the Commission should be focusing on funding the Workers' Compensation Program and should encourage CHSWC to perform this study.

Chairman Zachry offered to set up a committee and return a recommendation for a study at the next meeting. The recommendation will include what other departments and commissions would be prepared to provide in the way of funding.

The meeting adjourned at 1:41 p.m.